

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

RUFUS E. DENNIS,

Defendant.

8:20CR72

ORDER

In July 2021, a jury found defendant Rufus Dennis (“Dennis”) guilty of attempted Hobbs Act robbery, in violation of 18 U.S.C. § 1951(a), possession of a firearm in furtherance of a crime of violence, in violation of § 924(c)(1)(a), felon in possession of a firearm, in violation of § 922(g)(1), and possession of a stolen firearm, in violation of §§ 922(j) and 924(a)(2). The Court subsequently sentenced him to a total of 270 months imprisonment with three years of supervised release to follow. On April 11, 2022, Dennis appealed both his sentence and conviction (Filing No. 121).

On August 24, 2023, the United States Court of Appeals for the Eighth Circuit vacated his conviction under § 924(c) but otherwise affirmed his conviction on all other counts (Filing No. 138). The Eighth Circuit vacated Dennis’s sentence and remanded the matter for resentencing in light of the decision.

On December 8, 2023, the Court resentenced Dennis on the remaining counts to 240 months imprisonment to be followed by three years of supervised release. After the Amended Judgment (Filing No. 164) was entered in his case, Dennis promptly filed a Notice of Appeal (Filing No. 167) as to his new sentence.

Now before the Court are Dennis’s Motion to Proceed in Forma Pauperis and to Appoint Counsel (Filing Nos. 169, 170) to assist him in his second appeal. Because

Dennis has not complied with the applicable procedural requirements, those motions are denied.

“A party who was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization.” Fed. R. App. P. 24(a)(3). Otherwise, a party who privately retained counsel in the district-court action must “file a motion in the district court” and attach to it an affidavit demonstrating the “party’s inability to pay or to give security for fees and costs” on appeal. *Id.* 24(a)(1).

Dennis obtained privately-retained counsel to represent him in his first appeal and at resentencing. While he claims he is “indigent and unable to pay his appeal fee or pay for a transcript,” he has failed to provide the court an affidavit demonstrating his inability to pay for his second appeal. The Court will, therefore, deny his motions on this basis and reconsider the matter if Dennis files the requisite affidavit.

IT IS ORDERED:

1. Defendant Rufus Dennis’s Motion to Proceed in Forma Pauperis (Filing No. 169) is denied without prejudice.
2. The Motion to Appoint Counsel (Filing No. 170) is denied without prejudice.

Dated this 27th day of December 2023.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Robert F. Rossiter, Jr.", with a stylized flourish at the end.

Robert F. Rossiter, Jr.
United States District Judge